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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/966,845	09/28/2001	Barbara J. Boe	065027.0103	4972
5073	7590	05/27/2010		
BAKER BOTTS L.L.P. 2001 ROSS AVENUE SUITE 600 DALLAS, TX 75201-2980			EXAMINER RETTA, YEHDEGA	
			ART UNIT 3622	PAPER NUMBER
			NOTIFICATION DATE 05/27/2010	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ptomail1@bakerbotts.com  
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**Advisory Action  
Before the Filing of an Appeal Brief**

**Application No.**

09/966,845

**Applicant(s)**

BOE ET AL.

**Examiner**

Yehdega Retta

**Art Unit**

3622

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 03 May 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☒ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_  
13. ☐ Other: \_\_\_\_\_.

/Yehdega Retta/  
Primary Examiner, Art Unit 3622

Continuation of 11, does NOT place the application in condition for allowance because: A reissue application is filed to correct an error in the patent which was made without any deceptive intention, where, as a result of the error, the patent is deemed wholly or partly inoperative or invalid. An error in the patent arises out of an error in conduct which was made in the preparation and/or prosecution of the application which became the patent. There must be at least one error in the patent to provide grounds for reissue of the patent. If there is no error in the patent, the patent will not be reissued.

Examiner refers applicant to MPEP 1414 [R-7]

**II. A STATEMENT OF AT LEAST ONE ERROR WHICH IS RELIED UPON TO SUPPORT THE REISSUE APPLICATION (I.E., THE BASIS FOR THE REISSUE).**

(B) ... Where applicant specifies one such error, this requirement of a reissue oath /declaration is satisfied. Applicant may specify more than one error. Where more than one error is specified in the oath /declaration and some of the designated "errors " are found to not be "errors " under 35 U.S.C. 251, any remaining error which is an error under 35 U.S.C. 251 will still support the reissue. The "at least one error " which is relied upon to support the reissue application must be set forth in the oath /declaration. It is not necessary, however, to point out how (or when) the error arose or occurred. Further, it is not necessary to point out how (or when) the error was discovered. If an applicant chooses to point out these matters, the statements directed to these matters will not be reviewed by the examiner, and the applicant should be so informed in the next Office action. All that is needed for the oath /declaration statement as to error is the identification of "at least one error " relied upon. In identifying the error, it is sufficient that the reissue oath /declaration identify a single word, phrase, or expression in the specification or in an original claim, and how it renders the original patent wholly or partly inoperative or invalid. The corresponding corrective action which has been taken to correct the original patent need not be identified in the oath /declaration. If the initial reissue oath /declaration "states at least one error " in the original patent, and, in addition, recites the specific corrective action taken in the reissue application, the oath /declaration would be considered acceptable, even though the corrective action statement is not required.

(C) It is not sufficient for an oath /declaration to merely state "this application is being filed to correct errors in the patent which may be noted from the changes made in the disclosure. " Rather, the oath /declaration must specifically identify an error. In addition, it is not sufficient to merely reproduce the claims with brackets and underlining and state that such will identify the error. See In re Constant, 827 F.2d 728, 729, 3 USPQ2d 1479 (Fed. Cir., cert. denied, 484 U.S. 894 (1987)). Any error in the claims must be identified by reference to the specific claim(s) and the specific claim language wherein lies the error. A statement of " ... failure to include a claim directed to ..." and then presenting a newly added claim, would not be considered a sufficient " error" statement ">because< applicant has not pointed out what the other claims lacked that the newly added claim has, or vice versa. The error that was identified in the original declaration has not been corrected, therefore is not an error that need to be correct.

Applicant has not identified that error that has been corrected in order to provide grounds for reissue of the patent.